

identical influence for voters. Prior to 1962, the Supreme Court rejected efforts to draw the judiciary into the "political thicket" of apportionment. That changed with *Baker v. Carr*, when the court decreed that states could not depart too far from the principle of "one-man, one-vote" in allocating legislative representatives. Since then, the problem has been figuring, out what is too far.

Politicians often attempt to allocate political representation in ways that both dramatically increase and decrease the influence of citizens' votes. But the Framers designed checks and balances to prevent any group from dominating another permanently or from taking property or liberty to serve prejudice or politics. Integral was a division of government power reflecting different influences, some defined by historical boundaries, others by more local populations. The Constitution does not sweepingly embrace one theory of political representation but instead allocates power in several disparate ways.

Useful as "one-person, one-vote" is, it isn't a universal directive. Consider the Senate. The Constitution decrees that each state has two senators, regardless of the state's population or acreage. In contrast, the House of Representatives is based mostly on population, except for the requirement that each state have at least one representative. Making House districts roughly equal has been a source of dispute for 200 years. In the early 1800s, Elbridge Gerry redistricted Massachusetts to help his political allies, creating one district shaped like a salamander—thus giving birth to the term "Gerrymander."

After *Baker v. Carr*, the courts have insisted on greater degrees of mathematical equivalence in votes across districts. Since then, the problems associated with apportionment have grown. The Supreme Court rejected a plan with less than seven-tenths of one percent difference among districts. Courts have repeatedly invalidated efforts to draw lines between districts without totally disrupting traditionally established communities. At times the result has been to divide neighborhoods.

Added attention to other aspects of the reapportionment process, encompassing equality along racial and ethnic lines as well as across geographic districts, spawned further opportunities for realigning political districts to suit political interests rather than historical ones. Although boundary adjustments probably have increased minority representation in Congress, the jurisprudence of reapportionment has become needlessly complex and largely ineffective. The court has permitted a realignment of political power to advantage incumbents, create more safe districts, and facilitate greater division among elected representatives who no longer have to appeal to swing voters.

After fragments on the standards on racial gerrymandering, the court came up with no realistic way to assess what constitutes political gerrymandering. As Justice O'Connor said in *Davis v. Bandemer* in 1986—roughly contemporaneous with Judge Alito's statement—the court's effort to identify political gerrymandering was "flawed from its inception." Justice O'Connor charged that the court's decisions have been "contrary to the intent of [the] Framers and to the traditions of this Republic."

No one should be alarmed that Alito—like many other justices—found some aspect of the court's reapportionment decisions unfortunate. His position should reassure us that, as a justice, he will be open to seeing the flaws as well as the virtues of constitutional decision-making by judges. That is an important virtue in a Supreme Court justice.

#### ALITO'S VIEWS AND O'CONNOR'S

(By Michael Tolley)

Be alarmed when two partisan advocates—Kenneth W. Starr and Ronald A. Cass—say "no one should be alarmed" ("Alito's sticky thicket," op ed, Dec. 11). Their attempt to defend Judge Samuel Alito's disagreement with the Warren Court's reapportionment decisions by linking his position to Justice Sandra Day O'Connor's views fails for two reasons:

The two quotes they rely on in *Davis v. Bandemer* (1986) express O'Connor's view on whether the 14th Amendment's equal protection clause requires the principle of "proportional representation," not the principle of fundamental voting equality—one person, one vote. Second, *Baker v. Carr* (1962) and *Reynolds v. Sims* (1964), two of the landmark Warren Court decisions on reapportionment that Alito disagreed with, are actually treated favorably in O'Connor's concurring opinion in *Davis v. Bandemer*.

O'Connor was careful to distinguish the Supreme Court's legitimate concern about racial gerrymandering from partisan gerrymandering at issue in *Davis v. Bandemer*. Only by misreading O'Connor's opinion can Starr and Cass bring Alito's views in line with moderate justice he has been nominated to replace.

Does Alito believe, like O'Connor, in the principle of "one person, one vote"? Or is he against the use of federal judicial power to remedy discrimination resulting from malapportioned legislative districts? The difference between disagreeing with the extension of the principle "one person, one vote" to issues such as partisan gerrymandering and disagreeing with the principle of "one person, one vote" is the difference between a moderate and someone out of the judicial mainstream.

#### SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

#### DOMESTIC SURVEILLANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, merely hours after the Bush administration was celebrating the Iraqi election as a triumph for human freedom, what did we discover courtesy of the New York Times? That our own government, through the National Security Agency, is secretly spying on the phone calls and e-mails of American citizens without a warrant or a court order. And they have been doing so for nearly 4 years at the explicit direction of the President of the United States of America himself.

This is even more egregious than any of the other suspensions of civil liberties that we have seen in the last 4 years. It makes the PATRIOT Act look like it was written by the ACLU. Has anyone in the White House read the Bill of Rights and the fourth amendment about the right of the people to be secure in their persons, houses, papers, and effects against unreasonable

searches and seizures? It is a part of the same Constitution that the President has sworn to preserve, protect, and defend.

Mr. Speaker, I am not exaggerating when I say that sometimes I do not recognize my own country. Secret gulags in Eastern Europe, the Vice President personally lobbying Senators to give the CIA the right to torture detainees, and now this. What do I tell my grandchildren about what America stands for?

Does this White House believe in any transparency or oversight for anything they do, or do they think that getting 51 percent, or 51 out of every 100 votes gives them a mandate to operate behind a veil shielded from the day-in and day-out accountability that sustains a functioning democracy?

Remember, this is coming from the folks who preach about limited government. It turns out that they only want limited government as long as it would protect the wealthy and the powerful from high taxes and burdensome regulations. When it comes to privacy rights and ordinary Americans, they are in favor of the most intrusive and invasive big government imaginable.

The whole thing is Orwellian, Mr. Speaker. To defeat totalitarian extremism, we are adopting extremist totalitarian tactics of our own. In defense of freedom, we are undermining freedom. The whole thing is morally incoherent.

Let us remember that the war on terrorism is partly an ideological struggle. It is about winning over hearts and minds. But when we violate the very principles of freedom that we are preaching in the Middle East, what happens to our moral authority? What happens to our global credibility? Why should anyone take us seriously?

Those around the world who are skeptical of American values are surely noticing that we do not honor those values ourselves. And those who hate us will hate us even more when our government's hypocrisy is exposed.

And even if you do not believe this surveillance authority holds the key to victory on the war on terrorism, let us think for a minute about whom we have empowered to exercise it. The very same intelligence apparatus that has proven itself dysfunctional time and time again over recent years.

After all, the President himself just got through telling us this week that the U.S. intelligence community got it wrong on the most monumental and consequential issue it has faced in decades: whether Iraq had weapons of mass destruction. If they blew it on something as fundamental as that, why should we have confidence that they are conducting this domestic spying operation competently, without any abuses or overreach.

Mr. Speaker, is that what more than 2,100 Americans have given their lives for in Iraq, the right for a government to snoop and eavesdrop on its own people without probable cause? If we, the